

CLERK OF THE COURT

**MSTY**  
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*Attorneys for Defendant Sands China Ltd.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada  
corporation; SANDS CHINA LTD., a Cayman  
Island corporation; DOES I through X; and  
ROE CORPORATIONS I through X,

Defendants.

Case No.: A-10-627691-C

Dept. No.: XI

**DEFENDANT SANDS CHINA LTD.'S  
MOTION TO STAY PROCEEDINGS  
PENDING WRIT PETITION ON ORDER  
SHORTENING TIME**

DATE:

TIME: **FILE WITH  
MASTER CALENDAR**

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Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

1 Defendant Sands China Ltd. ("SCL" or "Defendant"), respectfully moves this Court, on  
2 shortened time pursuant to EDCR 2.26, to stay the proceedings in this case as against SCL only  
3 pending disposition by the Nevada Supreme Court of SCL's Petition for Writ of Mandamus or in  
4 the Alternative, Writ of Prohibition (the "Writ Petition"), filed on May 5, 2011. On June 24, 2011,  
5 the Nevada Supreme Court issued an Order Directing Answer to the Writ Petition, stating, among  
6 other things, that SCL's Writ Petition "set forth issues of arguable merit." The Writ Petition  
7 demonstrates that (i) an important issue of law requires clarification, (ii) considerations of sound  
8 judicial economy and administration militate in favor of granting the Writ Petition, and (iii) SCL has  
9 no "plain, speedy or adequate remedy" to challenge the Court's ruling denying SCL's Motion to  
10 Dismiss for Lack of Personal Jurisdiction. This Motion to Stay Proceedings Pending Writ Petition  
11 (the "Motion to Stay") is made to preserve SCL's due process rights which are the subject of the  
12 Writ Petition, conserve limited judicial resources and prevent the parties (and SCL in particular)  
13 from incurring substantial costs and expenses in proceeding with this case before the Nevada  
14 Supreme Court issues its ruling on the Writ Petition.

15 This Motion is made and based on the papers and pleadings on file herein, the following  
16 Memorandum of Points and Authorities, the Affidavits of Andrew D. Sedlock, Esq. and David  
17 Fleming, the Writ Petition previously served on this Court, and any oral argument allowed by the  
18 Court.

19 DATED this 13th day of July, 2011.

20 GLASER WEIL FINK JACOBS  
21 HOWARD AVCHEN & SHAPIRO LLP

22 By: 

23 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
24 Andrew D. Sedlock, Esq. (NBN: 9183)  
25 3763 Howard Hughes Pkwy., Ste. 300  
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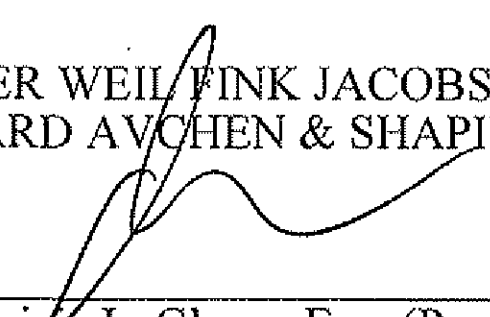
*Attorneys for Defendant Sands China Ltd.*

**APPLICATION FOR ORDER SHORTENING TIME**

SCL applies for an Order Shortening Time for the hearing on its Motion to Stay Proceedings Pending Writ Petition based upon the following Affidavit of Andrew D. Sedlock, Esq.

DATED this 13th day of July, 2011.

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLP

By:   
Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
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*Attorneys for Defendant Sands China Ltd.*

**AFFIDAVIT OF ANDREW D. SEDLOCK, ESQ. IN SUPPORT OF APPLICATION  
FOR ORDER SHORTENING TIME**

STATE OF NEVADA                    )  
  )ss:  
COUNTY OF CLARK                )

I, Andrew D. Sedlock, being first duly sworn, deposes and says as follows:

1. I am an associate with the law firm of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, counsel of record for Sands China Ltd. ("SCL") in the above-referenced matter. I have personal knowledge of the facts set forth herein, and I am competent to testify thereto if called upon to do so. I make this Affidavit pursuant to EDCR 2.26 in support of SCL's Motion to Stay.

2. This Motion requests a stay of this case as against SCL pending disposition by the Nevada Supreme Court of SCL's Writ Petition, filed on May 5, 2011 and served on this Court on May 18, 2011.

3. Shortly after filing and serving the Petition, SCL filed its first Motion to Stay (the "First Motion to Stay") which was denied without prejudice as premature following the hearing with this Court on May 26, 2011. (A true and accurate copy of the Order denying First Motion to Stay is attached hereto as **Exhibit A.**)

1           4.       On June 24, 2011, the Nevada Supreme Court issued and served an Order Directing  
2 Answer, which stated that SCL “has set forth issues of arguable merit” in the Petition and further  
3 ordered real party in interest, Steven C. Jacobs (“Jacobs”) to file an Answer on or before July 25,  
4 2011. (A true and accurate copy of the Order Directing Answer is attached hereto as **Exhibit B.**)

5           5.       As addressed by the Court at the April 22, 2011 early case conference and reflected  
6 in the Joint Status Report filed on April 22, 2011, the parties previously anticipated “that [Las  
7 Vegas Sands Corp’s] LVSC’s and SCL’s respective disclosures will consist of a high volume of  
8 documents which include Electronically Stored Information (ESI).” (A true and accurate copy of  
9 the April 22, 2011 Joint Status Report is attached hereto as **Exhibit C.**)

10          6.       After receiving Jacobs’ “Initial Identification of ESI Search Terms and Date Ranges”  
11 (the “Search Terms”), both SCL and LVSC undertook an analysis of the applicable law of the  
12 jurisdiction, Macau, Special Administrative Region of the People’s Republic of China (“Macau”), in  
13 which the overwhelming majority of this information is currently located.

14          7.       SCL’s counsel has previously advised Jacobs’ counsel that a Macau statute [the  
15 Macau Personal Data Protection Act (the “Macau Act”)] may be an impediment, if not a bar, to the  
16 parties retrieving, reviewing and producing certain personal information and documents, including  
17 ESI, that may be subject to Nevada Rule of Civil Procedure (“NRCP”) 16 disclosure requirements  
18 or that Jacobs may demand be produced.

19          8.       Counsel for SCL have since undertaken an analysis of the Macau Act as well as met  
20 with the Macau Office for Personal Data Protection (the “Macau OPDP”) to determine the most  
21 efficient and compliant method to review and produce ESI currently stored in Macau in compliance  
22 with the Macau Act.

23          9.       The Macau OPDP has confirmed that, SCL’s Macau subsidiaries are prohibited from  
24 producing or otherwise transferring ESI or other documents containing personal information, to  
25 anyone outside of Macau (including Jacobs’ counsel), unless (i) the data subjects of the document  
26 consent to the transfer of personal data outside of Macau, and/or (ii) the Macau OPDP consents to  
27 such transfer of personal data outside of Macau, depending on the sensitivity of the personal data in  
28 question. In the event consent is given by the data subjects of the relevant documents, SCL’s Macau

1 subsidiaries must still provide notice to the OPDP that consent has been received before the transfer  
2 of data outside of Macau. In order to seek such consent from the data subjects or the Macau OPDP,  
3 SCL will need to conduct a significant amount of work at considerable expense exceeding One  
4 Million Dollars (U.S.) (\$1,000,000.00) based on the information presently available to SCL.

5 10. Currently, SCL has identified potentially responsive documents and ESI ranging  
6 from approximately 2 terabytes (2000 gigabytes) to 13 terabytes (13,000 gigabytes), or more, that  
7 may have to be reviewed in order to comply with the requirements set forth by the Macau OPDP as  
8 discussed above.

9 11. This amount is approximately equivalent to nearly ten percent (10%) of all of the  
10 information currently catalogued on the U.S. Library of Congress' web archives. A true and  
11 accurate copy of the U.S. Library of Congress Web Archive FAQ page,  
12 [www.loc.gov/webarchive/faq](http://www.loc.gov/webarchive/faq), is attached hereto as **Exhibit D**.

13 12. SCL's counsel has been advised that failure to comply with these requirements could  
14 result in significant civil and/or criminal penalties.

15 13. Pursuant to meet and confer discussions regarding outstanding discovery issues, the  
16 parties have agreed to the foregoing tentative deadlines for the parties to produce responsive  
17 documents in this case:

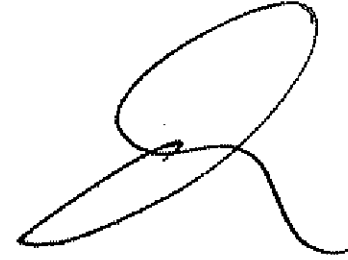
- 18 • Jacobs: complete production on August 15, 2011
- 19 • LVSC: complete production on August 31, 2011
- 20 • SCL: complete production on August 31, 2011

21 Given the significant amount of work to review and process documents in advance of the foregoing  
22 deadline, SCL would unfairly be required to perform significant work at enormous cost, which will  
23 be unnecessary if the Nevada Supreme Court grants SCL's Writ Petition and rules that the Court  
24 lacks personal jurisdiction over SCL.

25 14. If the Motion to Stay is fully briefed by the parties and heard in the ordinary course,  
26 SCL may be unnecessarily required to undertake actions it maintains are in violation of its due  
27 process rights, which are the subject of the Writ Petition.  
28

15. It is respectfully submitted that this Court is justified in shortening the time for briefing and hearing on the Motion to Stay and that the Motion to Stay should be set for hearing at the Court's earliest available calendar date.

EXECUTED July 13, 2011.



Andrew D. Sedlock, Esq.

Subscribed and Sworn to before me on this 13th day of July, 2011.



Notary Public, in and for said County and State.

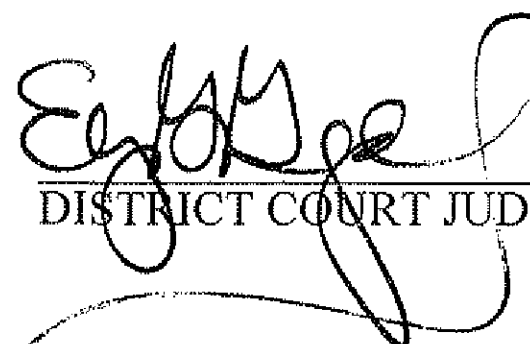


**ORDER SHORTENING TIME**

The Court, having considered Defendant's Application for an Order Shortening Time, the Affidavit of Andrew D. Sedlock, Esq., the Memorandum of Points and Authorities submitted with the Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing Defendant's Motion to Stay Proceedings Pending Writ Petition is shortened to the 19 day of July, 2011, at the hour of 9:00 a.m. in the above-entitled Court.

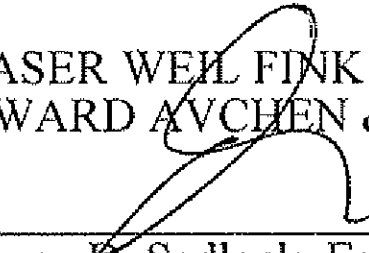
DATED this \_\_\_\_ day of July, 2011.



DISTRICT COURT JUDGE

Respectfully Submitted by:

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLC

By:   
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
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*Attorneys for Defendant Sands China Ltd.*

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**NOTICE OF MOTION**


TO: ALL INTERESTED PARTIES; and

TO: COUNSEL FOR ALL INTERESTED PARTIES;

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.m. on said date, in Department XI, or as soon thereafter as counsel can be heard.

DATED this 13 day of July, 2011.

GLASER WEIL FINK JACOBS  
HOWARD, AVCHEN & SHAPIRO LLP

By:   
Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
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*Attorneys for Defendant Sands China Ltd.*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Following the denial of SCL's First Motion to Stay, the Nevada Supreme Court issued an Order Directing Answer (the "Order") on June 24, 2011. *See* Ex. B. The Order stated that SCL's Petition "set forth issues of arguable merit and that an answer to the petition is warranted." *Id.* The Order provides a briefing schedule, ordering Jacobs to file his answer to the Writ Petition on or

1 before July 25, 2011, with SCL's reply due fifteen (15) days after service of Jacobs' answer. *Id.*<sup>1</sup> In  
2 light of the foregoing, SCL respectfully submits this new motion to stay proceedings.

3 Pursuant to the parties' meet and confer discussions regarding outstanding discovery issues,  
4 the parties have tentatively agreed to produce relevant documents in August 2011 subject to further  
5 meet and confer discussions. However, based upon recent input from the Macau OPDP, SCL must  
6 ensure that any such production of documents by its Macau subsidiaries complies with Macau law,  
7 including the Macau Act, which will require that SCL cause its Macau subsidiaries to review an  
8 enormous amount of documents and ESI in order to (i) seek consent from the data subjects that  
9 transfer of personal data outside of Macau is authorized, and/or (ii) seek such consent from the  
10 Macau OPDP, depending on the sensitivity of the personal data at issue.<sup>2</sup> For example, even if a  
11 data subject gives consent, SCL's Macau subsidiaries must still notify the OPDP before transferring  
12 the personal data outside of Macau. In order to perform this significant amount of work by the end  
13 of August 2011, SCL would be unfairly (and perhaps unnecessarily) forced to expend a significant  
14 amount of resources and expenses, exceeding One Million Dollars (\$1,000,000.00), including but  
15 not limited to SCL's outside lawyers traveling to Macau to review and analyze these materials,  
16 hiring outside vendors to process between approximately 2 to 13 terabytes of ESI, or possibly more,  
17 and hiring contract lawyers to travel to Macau to review these materials.

18 As described in greater detail below, a stay is warranted at this time pursuant to the analysis  
19 of the following four factors set forth by Nevada law: (1) the purpose of SCL's Writ Petition, which  
20 is to protect SCL's due process rights and prevent further improper exercise of personal jurisdiction;  
21 (2) SCL will suffer irreparable harm if the stay is denied, including the continued deprivation of due  
22 process rights, the inevitable conflict between Macau's data privacy laws and Nevada's rules  
23

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24 <sup>1</sup> Separately, the Nevada Supreme Court now has before it Plaintiff Jacobs' recent Notice of Appeal challenging the  
25 decision of this Court to grant the motion to dismiss Jacobs' defamation claim and the resulting dismissal of former  
26 defendant Sheldon G. Adelson ("Adelson") from the pending lawsuit.

27 <sup>2</sup> Based upon information presently available to SCL, it is unclear whether the Macau OPDP will provide such consent  
28 to produce or otherwise transfer personal data outside of Macau. Even before SCL approaches the OPDP to seek such  
consent, SCL would be required to expend a significant amount of resources and expenses to process and review the  
data at issue in order to identify the potentially personal data subject to the Macau Act. *See* Affidavit of David Fleming.



1 regarding production of documents, along with the staggering cost of reviewing and producing such  
2 documents; (3) Jacobs will suffer no harm by the issuance of a stay; and (4) as established by the  
3 Nevada Supreme Court's recent Order, SCL's Writ Petition has merit and will be ruled upon  
4 following the submission of the parties' briefs.

5 Therefore, SCL now respectfully requests that this Court stay the proceedings pending the  
6 disposition of SCL's Writ Petition, which is warranted to protect SCL's due process rights and  
7 conserve both the parties' and the Court's resources.

## 8 II. STATEMENT OF PERTINENT FACTS

9 While the Court is now familiar with the underlying facts in this case, SCL submits an  
10 abridged summary of the factual and procedural history preceding this Motion to Stay.

### 11 A. SCL's Writ Petition Regarding its Motion to Dismiss for Lack of Personal 12 Jurisdiction

13 SCL is a Cayman Islands company that does business exclusively in Macau and Hong Kong  
14 SAR of the People's Republic of China ("Hong Kong"). *See* Affidavit of Anne Salt ("Salt Aff'd")  
15 at ¶ 3, attached to SCL's December 22, 2010 Motion to Dismiss.<sup>3</sup> Jacobs' remaining claim against  
16 SCL, as set forth in his First Amended Complaint ("FAC"), is for breach of contract and alleges that  
17 while employed in Macau as SCL's President and Chief Executive Officer, SCL presented Jacobs  
18 with a letter (the "Stock Option Grant Letter") that allegedly provided for a grant to Jacobs of an  
19 option to purchase 2.5 million shares of SCL stock. *See* First Amended Complaint at ¶ 44. The  
20 Stock Option Grant Letter states that it is governed by and construed in accordance with Hong Kong  
21 law and further conditioned Jacobs' ability to exercise the option to purchase SCL stock on, among  
22 other things, Jacobs' continued employment for SCL. *See* true and accurate copy of Stock Option  
23 Grant Letter, attached to SCL's December 22, 2010 Motion to Dismiss at Exhibit F. Jacobs was  
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25  
26 <sup>3</sup> SCL is required by the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited to  
27 carry on its business independently of, and at arms' length from, its "controlling shareholder," namely, LVSC. *See* true  
28 and accurate copy of the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited,  
attached as Exhibit B to SCL's Reply in Support of December 22, 2010 Motion to Dismiss.

1 subsequently terminated before any of his options vested pursuant to the Stock Option Grant Letter.  
2 See Salt Aff'd at ¶ 15.

3 SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion to Dismiss  
4 for Lack of Personal Jurisdiction (the "Jurisdiction Motion").<sup>4</sup> The Court denied the Jurisdiction  
5 Motion and ruled that it could exercise general personal jurisdiction over SCL due to the actions  
6 taken in Nevada by Adelson, a non-executive director and Chairman of SCL's Board of Directors  
7 (the "Board"), and by Michael Leven ("Leven"), a special advisor to SCL's Board of Directors. See  
8 Transcript of March 15, 2011 Hearing, p. 62, lines 11-13. Adelson and Leven also are officers and  
9 directors of Las Vegas Sands Corp. ("LVSC"), which is SCL's majority shareholder by virtue of its  
10 ownership of approximately seventy percent (70%) of SCL's outstanding shares. See Salt Aff'd at  
11 ¶¶ 4, 5.

12 SCL subsequently filed the Writ Petition, which requests an Order from the Nevada  
13 Supreme Court compelling this Court to grant the Jurisdiction Motion, dismiss SCL from the  
14 pending suit and cease the continued exercise of personal jurisdiction over SCL. See May 6, 2011  
15 Writ Petition.

16 **B. SCL's Significant Work to Comply With Macau Law In Order to Gather and**  
17 **Produce Documents in this Action**

18 Following the Court's denial of SCL's First Motion to Stay as premature, the parties have  
19 continued to meet and confer regarding the scope of defendants' initial production of documents,  
20 and have tentatively agreed that SCL and LVSC shall complete their respective initial production of  
21 documents on or before August 31, 2011, with Jacobs scheduled to complete his production on or  
22 before August 15, 2011. In anticipation of reviewing and producing documents located in Macau,  
23 SCL's General Counsel and Company Secretary, David Fleming, met with the Macau OPDP to  
24

25  
26  
27 <sup>4</sup> SCL also filed a Motion to Dismiss for Failure to State a Claim on April 20, 2011, which was scheduled for hearing  
28 with this Court on June 9, 2011. That motion was denied in part, as to the breach of contract claims, and granted in part,  
in regard to the defamation claims included in Jacobs' First Amended Complaint.

1 confirm the proper procedure required by the Macau Act and enforced by the Macau government.  
2 *See* Affidavit of David Fleming (the “Fleming Aff’d”).

3       According to the Macau OPDP, production of ESI and other documents stored in Macau will  
4 require strict compliance with relevant Macau law. *Id.* First, SCL’s Macau subsidiaries will be  
5 required to review a vast amount of documents and ESI in order to (i) identify and obtain consent  
6 from relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
7 consent from the Macau OPDP before transferring such personal data outside of Macau, depending  
8 on the sensitivity of the personal data at issue. *Id.* In the event consent is given by the data subjects,  
9 SCL’s Macau subsidiaries must still provide notice to the OPDP that consent has been received  
10 before the transfer of data outside of Macau. *Id.*

11       In order to perform this amount of work before the August 31, 2011 deadline, SCL’s Macau  
12 subsidiaries must bring several of its outside counsel to Macau to review and analyze this  
13 information after hiring vendors to process between approximately 2 to 13 terabytes of information,  
14 or possibly more. *Id.* Strict protocols must be adhered to in order to ensure that no personal data  
15 leaves Macau in breach of the Macau Act. *Id.* For the Court’s perspective, the lowest estimate of 2  
16 terabytes (2000 gigabytes) is equivalent to nearly ten percent (10%) of all of the information  
17 currently catalogued by the U.S. Library of Congress. *See* Ex. D. It is currently estimated that this  
18 process will cost in excess of One Million Dollars (\$1,000,000.00) to complete. *See* Fleming Aff’d.  
19 Lastly, SCL has also been informed that the Macau Act and its requirements will be strictly  
20 enforced, and failure to comply may result in civil and criminal penalties. *Id.*

21       SCL now submits its renewed Motion to Stay, which is warranted due to the mounting  
22 burdens posed by the discovery process and the Nevada Supreme Court’s recent decision to hear  
23 SCL’s Writ Petition challenging the Court’s continued exercise of personal jurisdiction over SCL in  
24 derogation of SCL’s due process rights.  
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### III. ARGUMENT

#### A. The Legal Standard.

In ruling on a motion to stay proceedings pending the Nevada Supreme Court's review of a writ petition, the Court should consider the following factors under Nevada law:

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

*Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (explaining that the requirements in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a decision "issued by the district court") (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)).

As demonstrated below, the foregoing factors provide the Court with good cause to stay the proceedings in this case pending the Nevada Supreme Court's disposition of the Writ Petition.

#### B. The Object of the Petition Will be Defeated Unless A Stay is Granted in the Underlying Proceedings.

As stated above, the Nevada Supreme Court issued the Order on June 24, 2011 which confirmed that, after its review of the Writ Petition, SCL had "set forth issues of arguable merit and that an answer to the petition is warranted." See Ex. A. The Order further required Jacobs to file an Answer within thirty (30) days of the filing of the Order (or July 25, 2011), with SCL's Reply due fifteen (15) days after service of the Answer. *Id.*

The willingness of the Nevada Supreme Court to consider SCL's Writ Petition regarding personal jurisdiction issues reflects the fact that matters concerning the determination of personal jurisdiction necessarily involve threshold, fundamental due process considerations. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); see also *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). As stated in the Writ Petition and in SCL's First Motion to Stay, the due process protections at issue in a challenge to personal jurisdiction are recognized as

1 “fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and  
2 tradition,’” and are “implicit in the concept of ordered liberty,” such that “neither liberty nor justice  
3 would exist if they were sacrificed.” *See Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

4 The Nevada Supreme Court has recognized the arguable merits of the Petition’s arguments,  
5 and that SCL may not be subject to personal jurisdiction in this Court. In the absence of personal  
6 jurisdiction, the Court cannot enter or enforce any orders against SCL, and SCL is not subject to  
7 service, discovery requests, or any other demands whatsoever incident to an ongoing litigation. *See*  
8 *Monteverde, et al. v. Selnick*, 223 B.R. 755, 757 (D. Nev. 1998) (ruling that without personal  
9 jurisdiction, the court cannot enter or enforce any orders, even by contempt proceedings). In the  
10 absence of a stay, the object of the Writ Petition will be defeated as SCL will continue to be subject  
11 to the Court’s jurisdiction and any further orders or obligations imposed by the NRCP.

12 While reserving its respective rights as set forth in the Writ Petition, the discovery process  
13 has commenced and the parties have already exchanged initial lists of witnesses, and have continued  
14 the formidable task of identifying and producing relevant documents. A stay is now warranted and  
15 indeed required to avoid any further exercise of personal jurisdiction over SCL before that very  
16 issue is decided by the Nevada Supreme Court.

17 Therefore, to avoid defeating the purpose of the Writ Petition and interfering with the  
18 Nevada Supreme Court’s consideration of the arguments set forth in the Writ Petition, this Court  
19 should stay these proceedings against SCL.

20 **C. SCL Will Suffer Irreparable Harm Unless the Stay is Granted.**

21 The Nevada Supreme Court has stated that when a party can demonstrate that it will face  
22 irreparable or serious harm if a stay is denied, that should be considered in the stay analysis. *See*  
23 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004). With the recent filing of the Order  
24 and the Nevada Supreme Court’s decision to consider the Writ Petition’s meritorious arguments, the  
25 possibility of irreparable harm has now become timely and more tangible.

26 In the absence of a stay, SCL must continue with the ongoing costly and time-consuming  
27 discovery process and will be under an obligation to produce documents and information pursuant  
28 to the discovery requirements set forth in Nevada law. However, if the Nevada Supreme Court

1 grants the relief requested in the Writ Petition and issues an order dismissing SCL from the lawsuit  
2 at some future date, how can this process be undone? Jacobs will be in possession of information of  
3 which he may otherwise not be entitled to receive, with no mechanism in place to “un-ring the bell.”  
4 This affects not only SCL, but the other defendant in this case, LVSC (and possibly Adelson if the  
5 Nevada Supreme Court grants Jacobs’ appeal of the Court’s Order dismissing the defamation cause  
6 of action against Adelson).<sup>5</sup> Simply put, the harm potentially caused by a failure to grant a stay has  
7 no remedy, and the impact of that harm strongly supports the imposition of a stay as to SCL.

8 In addition to the irreparable harm directly caused by SCL’s production of documents and  
9 information in this case is the heavy burden of reviewing and producing the information currently  
10 stored and controlled by SCL’s subsidiaries in Macau (which makes up a significant portion of all  
11 information in SCL’s possession). As explained above, this herculean task will necessarily involve  
12 the processing of an overwhelming amount of information, after which consent must be given by  
13 each generating user of the relevant document or ESI and/or representatives of the Macau  
14 government before any personal data can be transferred out of Macau. See Fleming Aff’d at ¶¶ 5,  
15 6. The sheer cost, in terms of time and resources, of engaging in this process would severely  
16 prejudice SCL, particularly considering the Nevada Supreme Court’s possible subsequent ruling that  
17 this Court cannot exercise personal jurisdiction over SCL in this case. Given the due process issues  
18 addressed in the Writ Petition, SCL respectfully requests that this Court stay the proceedings to  
19 avoid causing irreparable harm and further violating SCL’s due process rights.

20 **D. Jacobs Will Suffer No Harm Through A Stay of These Proceedings.**

21 Jacobs will suffer no harm by waiting for the Nevada Supreme Court to decide whether to  
22 consider the Writ Petition. Jacobs’ only claimed “harm” that could be caused by the stay would be a  
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24  
25 <sup>5</sup> Jacobs’ recent Notice of Appeal further complicates this matter because if the Nevada Supreme Court subsequently  
26 grants Jacobs’ appeal to overturn the Court’s dismissal of the defamation claim against Adelson, SCL may be forced to  
27 revisit and perhaps repeat its work to gather, process and review documents and ESI in order to include discovery  
28 regarding the defamation cause of action, that is currently not part of this litigation. Additionally, the scope of discovery  
and discovery obligations of SCL’s Chairman of the Board of Directors (Adelson) will also change depending on  
whether Mr. Adelson is a non-party to this litigation (as he is now), or becomes a party (if the Nevada Supreme Court  
grants Jacobs’ appeal).

1 delay in the proceedings, and “a mere delay in pursuing discovery and litigation normally does not  
2 constitute irreparable harm.” *See Mikohn*, 120 Nev. at 253. This factor therefore weighs in favor of  
3 granting SCL’s Motion to Stay.

4 Additionally, given Jacobs’ recent filing of an appeal challenging the Court’s decision to  
5 dismiss his defamation claim and Adelson from this case, Jacobs would benefit from a stay while  
6 the Nevada Supreme Court considers Jacobs’ appeal.

7 Therefore, as Jacobs will suffer no harm as a result of a stay, SCL’s request is warranted and  
8 the Court should issue an order staying this case as to SCL.

9 **E. SCL is Likely to Prevail on the Merits of Their Petition.**

10 The Order filed by the Nevada Supreme Court made clear that it has reviewed the Writ  
11 Petition and found it to be arguably meritorious. In summary, the Writ Petition addresses the  
12 following important issues:

13 First, Nevada should join the majority of jurisdictions which require a showing of alter ego  
14 before a domestic entity’s in-forum contacts can be attributed to a foreign affiliate for jurisdictional  
15 purposes. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (“[I]f the parent and  
16 subsidiary are not really separate entities, or one acts as the agent of the other, the local [entity’s]  
17 contacts with the forum may be imputed to the foreign [entity]”); *see also Newman v.*  
18 *Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9<sup>th</sup>  
19 Cir. 1996). It is undisputed that Jacobs did not introduce any evidence, nor did the Court make any  
20 findings, that SCL is the alter ego of LVSC. If the Nevada Supreme Court adopts the prevailing  
21 standard, the Writ Petition will be granted and an order will be issued to grant the Motion and  
22 dismiss SCL.

23 Second, a minority of jurisdictions that have addressed this issue have held that only when  
24 evidence is presented that shows the in-forum entity exerts a level of control over the foreign entity  
25 that exceeds its investment status in the foreign entity, can the in-forum entity’s actions be  
26 considered in the jurisdictional analysis regarding the foreign entity. *See Reul v. Sahara Hotel, Inc.*,  
27 372 F.Supp 995, 998 (S.D. Tx. 1974). Again, Jacobs presented no evidence, and the Court made no  
28 findings, that LVSC exerted an excessive degree of control over SCL, considering LVSC’s status as



majority shareholder. Thus, even adopting a minority standard, the Nevada Supreme Court should grant the Writ Petition and dismiss SCL from this case.

Third, Nevada should join the consensus that the mere presence of directors or officers in the Nevada, and the corresponding performance of their duties, cannot (without a showing of alter ego or excessive control by the in-forum entity) be used to confer general personal jurisdiction over a foreign entity in Nevada. *See Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985). To the extent that the Court's denial of SCL's Motion was based on the activities of Adelson and Leven in Nevada without regard to the degree of control exercised by LVSC over SCL, such a decision is contrary to established due process requirements and the basic tenet of corporate law that recognizes a legal separation between entities and their officers, directors, shareholders, and affiliates. The Nevada Supreme Court should recognize the nearly universal application of this principle and grant the Petition.

Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous and systematic" requirements under Nevada law, courts examine a defendant's intentional conduct that is actually directed at the forum state. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998). In this case, Jacobs' allegations concern actions taken by Adelson and Leven that were directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of Adelson and Leven therefore cannot be used to demonstrate any "substantial or continuous and systematic" contact necessary for general jurisdiction<sup>6</sup>.

---

<sup>6</sup> To the extent Jacobs attempts to introduce evidence that Adelson and Leven performed their duties as Chairman of the SCL Board of Directors and Special Advisor to the SCL Board of Directors, respectively, from Las Vegas and that SCL allegedly directed or participated in actions with its parent company, LVSC, in Las Vegas, the Writ Petition addresses those arguments as insufficient to establish general personal jurisdiction. First, the presence of directors in the forum state and the discharge of their duties from the forum state is inadequate to confer general personal jurisdiction. *See Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) (noting that a corporation is separate and distinct from its officers and directors, and declining to find personal jurisdiction based on resulting actions taken by directors in forum state). Second, evidence of SCL's interaction with LVSC or participation in shared services cannot form the basis of general jurisdiction, as such participation or oversight by a parent corporation does not denote alter ego or an "excessive degree of control" as required to apply general personal jurisdiction over a foreign subsidiary. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement includes overseeing accounting procedures and other corporate functions); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to demonstrate unity of interest between entities).




1 Because SCL is likely to prevail on the merits of its Writ Petition, this Motion to Stay should  
2 be granted.

3 **IV. CONCLUSION**

4 For the reasons set forth above, SCL respectfully requests that the Court grant this Motion to  
5 Stay pending disposition by the Nevada Supreme Court of SCL's Writ Petition.

6 Dated this 13th day of July, 2011.

7 GLASER WEIL FINK JACOBS  
8 HOWARD AVCHEN & SHAPIRO LLP

9  
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*Attorneys for Defendant Sands China Ltd.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,  
Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada  
corporation; SANDS CHINA LTD., a Cayman  
Island corporation; DOES I through X; and  
ROE CORPORATIONS I through X,  
Defendants.

Case No.: A-10-627691-C

Dept. No.: XI

**AFFIDAVIT OF DAVID FLEMING IN  
SUPPORT OF DEFENDANT SANDS  
CHINA LTD.'S MOTION TO STAY  
PROCEEDINGS PENDING WRIT  
PETITION ON ORDER SHORTENING  
TIME**

)  
)ss:  
)

David Fleming, being first duly sworn, deposes and states:

1. I am the General Counsel and Company Secretary of Sands China Ltd. ("SCL"). I have personal knowledge of the matters stated herein except those stated upon information and belief and I am competent to testify thereto.
2. I make this Affidavit in support of SCL's Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time (the "Motion to Stay").

1           3.       On June 28, 2011, I met with representatives of the Macau government's Office for  
2 Personal Data Protection (the "Macau OPDP") to identify the proper procedures required by Macau  
3 law and enforced by the Macau government, in particular the Personal Data Protection Act (the  
4 "Macau Act"), in connection with SCL's work to gather, review and produce documents.

5           4.       According to the Macau OPDP, production of Electronically Stored Information  
6 ("ESI") and other documents stored in Macau will require strict compliance with relevant Macau  
7 law.

8           5.       For example, in order to comply with the Macau Act, SCL's Macau subsidiaries will  
9 be required to review a vast amount of documents and ESI in order to (i) obtain consent from  
10 relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
11 consent from the Macau OPDP before transferring such personal data outside of Macau, depending  
12 on the sensitivity of the personal data at issue, as required by the Macau Act.

13           6.       In the event consent is given by the data subjects, SCL's Macau subsidiaries must  
14 still provide notice to the Macau OPDP that consent has been received for the transfer before the  
15 initiation of the transfer of the data outside of Macau. Even before SCL approaches the data  
16 subjects or the Macau OPDP to seek such consent, SCL would be required to expend a significant  
17 amount of resources and expenses to process and review the data at issue in order to identify the  
18 potentially personal data subject to the Macau Act.

19           7.       In order to perform this amount of work before the tentative August 31, 2011  
20 deadline as discussed with Jacobs' counsel, SCL's Macau subsidiaries will need to bring more than  
21 ten (10) of its outside counsel and ESI consultants to Macau to review, analyze, and process  
22 between approximately 2 to 13 terabytes of information, or possibly more. Strict protocols must be  
23 adhered to in order to ensure that no personal data leaves Macau in violation of the Macau Act.  
24 Based on information provided to SCL by vendors, it is currently estimated that this process will  
25 cost in excess of One Million U.S. Dollars (\$1,000,000.00) to complete.  
26  
27  
28

8. SCL has also been informed that the Macau Act and its requirements will be strictly enforced by the Macau government, in particular the Macau OPDP, and failure to comply may result in civil and criminal penalties.

9. Nothing in this declaration is intended to be a waiver of any privileges, including but not limited to, the attorney-client privilege and the attorney work product privilege, all of which are expressly reserved.

~~David Fleming~~

Subscribed and sworn to before me  
this \_\_\_\_\_ day of July, 2011

NOTARY PUBLIC in and for

My Commission expires \_\_\_\_\_

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

**CARTÓRIO DO NOTÁRIO PRIVADO DIAMANTINO DE OLIVEIRA FERREIRA**

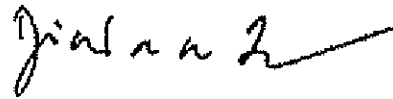
Reconheço a assinatura retro de **DAVID ALEC ANDREW FLEMING**, por confronto com a assinatura aposta no seu Passaporte nº EB641239, emitido em 20 de Agosto de 2009, pelo Governo da Nova Zelândia, cuja pública-forma me foi exibida.

Conta nº 96

\$7,00

Macao, 13 de Julho de 2011

O Notário,



TRANSLATION

**OFFICE OF THE PRIVATE NOTARY DIAMANTINO DE OLIVEIRA FERREIRA**

I certify the signature on the front page, of **DAVID ALEC ANDREW FLEMING** by confront with the signature shown on his Passport nº EB641239, issued on the 20th August 2009, by the Government of New Zealand, which notarized copy was shown to me.

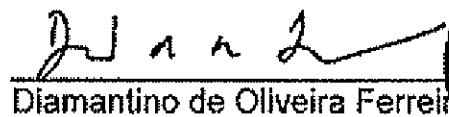
Account nº 96

\$7,00

Macao 13<sup>th</sup> July 2011

The Notary  
(signature)

Translation made in Macao, on 13<sup>th</sup> July 2011, by me Diamantino de Oliveira Ferreira in my capacity of Attorney at Law in the SAR of Macao, and its according to the original.

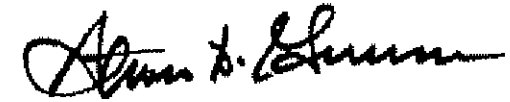


Diamantino de Oliveira Ferreira



EXHIBIT "A"

EXHIBIT "A"



CLERK OF THE COURT

1 **ORDER**

2 **CAMPBELL & WILLIAMS**

3 **DONALD J. CAMPBELL, ESQ. (#1216)**

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5 **J. COLBY WILLIAMS, ESQ. (#5549)**

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9 **Telephone: (702) 382-5222**

10 **Facsimile: (702) 382-0540**

11 *Attorneys for Plaintiff*

12 *Steven C. Jacobs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **STEVEN C. JACOBS,**

16 **Plaintiff,**

17 **vs.**

18 **LAS VEGAS SANDS CORP., a Nevada**  
19 **corporation; SANDS CHINA LTD., a Cayman**  
20 **Islands corporation; SHELDON G. ADELSON,**  
21 **in his individual and representative capacity;**  
22 **DOES I through X; and ROE CORPORATIONS**  
23 **I through X,**

24 **Defendants.**

25 **CASE NO. A-10-627691-C**

26 **DEPT. NO. XI**

27 **ORDER DENYING DEFENDANT**  
28 **SANDS CHINA LTD.'S MOTION**  
**TO STAY PROCEEDINGS**  
**PENDING WRIT PETITION ON**  
**ORDER SHORTENING TIME**

Hearing Date: May 26, 2011

Hearing Time: 9:00 a.m.

29 Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition was heard  
30 on shortened time on May 26, 2011; Plaintiff Steven C. Jacobs having been represented by Donald J.  
31 Campbell, Esq. and J. Colby Williams, Esq.; Defendant Las Vegas Sands Corp. having been  
32 represented by Stephen J. Peek, Esq.; Defendant Sands China, Ltd. having been represented by Mark  
33 G. Krum, Esq.; Defendant Sheldon G. Adelson having been represented by Steve Morris, Esq.; and  
34 the Court having considered all of the papers and pleadings on file herein as well as the oral  
35 argument of the parties, hereby enters the following Order:

Page 1 of 2



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07-01-11P02:39 RCVD

1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on  
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this \_\_\_\_ day of June, 2011.

4  
5 \_\_\_\_\_  
DISTRICT COURT JUDGE

6 Submitted by:

7 CAMPBELL & WILLIAMS

8  
9 By: 

10 DONALD J. CAMPBELL, ESQ. (#1216)

11 J. COLBY WILLIAMS, ESQ. (#3549)

700 South Seventh Street

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Steven C. Jacobs

14  
15 Approved as to form:

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17  
18 By: \_\_\_\_\_

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22 *Las Vegas Sands Corp.*

23 MORRIS PETERSON

24  
25 By: \_\_\_\_\_

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28 *Sheldon G. Adelson*

GLASER, WEIL, FINK, JACOBS

HOWARD & SHAPIRO, LLP

By: 

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*Sands China, Ltd.*



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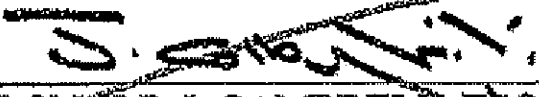
1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on  
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this 5<sup>th</sup> day of July, 2011.

4  
5   
DISTRICT COURT JUDGE

6 Submitted by:

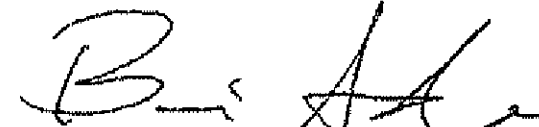
7 CAMPBELL & WILLIAMS

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9 By:   
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22 Las Vegas Sands Corp.

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Sands China, Ltd.



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1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on  
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this \_\_\_\_ day of June, 2011.

4  
5 \_\_\_\_\_  
DISTRICT COURT JUDGE

6 Submitted by:

7 CAMPBELL & WILLIAMS

8  
9 By: 

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13 *Attorneys for Plaintiff*  
*Steven C. Jacobs*

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15 Approved as to form:

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HOWARD & SHAPIRO, LLP

17  
18 By:

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*Las Vegas Sands Corp.*

22 MORRIS PETERSON

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24 By: 

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*Sheldon G. Adelson*

By:

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*Sands China, Ltd.*



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FAX: 702/382-0540

EXHIBIT "B"

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
ELIZABETH GOFF GONZALEZ,  
DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,  
Real Party in Interest.

No. 58294

**FILED**

JUN 24 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DIRECTING ANSWER

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss.

Having reviewed the petition, it appears that petitioner has set forth issues of arguable merit and that an answer to the petition is warranted. Therefore, real party in interest, on behalf of respondents,<sup>1</sup> shall have 30 days from the date of this order to file and serve an answer,

---

<sup>1</sup>Based on the documents before us, it appears that petitioner has not served its petition and appendices on respondents, the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Goff Gonzalez. Petitioner shall therefore have five days from this order's date to serve respondents with a copy of the petition and appendices. Within that same time period, petitioner shall file in this court a certificate of service demonstrating that respondents were served with these documents. We caution petitioner that its failure to comply with this directive may result in the dismissal of this petition.

including authorities, against issuance of the requested writ. Petitioner shall have 15 days from the date of service of real party in interest's answer to file and serve any reply.

It is so ORDERED.

*Dryden*, C.J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLC  
Campbell & Williams

EXHIBIT "C"

EXHIBIT "C"



CLERK OF THE COURT

1 **STAT**

2 J. Stephen Peek, Esq.

3 Nevada Bar No. 1759

4 Justin C. Jones, Esq.

5 Nevada Bar No. 8519

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13 *Attorneys for Defendant Las Vegas Sands Corp.*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **STEVEN C. JACOBS,**

17 Plaintiff,

18 v.

19 **LAS VEGAS SANDS CORP.,** a Nevada  
20 corporation; **SANDS CHINA LTD.,** a Cayman  
21 Islands corporation; **SHELDON G. ADELSON,**  
22 in his individual and representative capacity;  
23 **DOES I-X; and ROE CORPORATIONS I-X,**

24 Defendants.

CASE NO.: A627691-B

DEPT NO.: XI

Date: April 22, 2011

Time: 9:00 a.m.

**JOINT STATUS REPORT**

On April 18, 2011 the parties, by and through their respective counsel, met to discuss an agreeable discovery and briefing schedule. Patricia Glaser appeared on behalf of Defendant Sands China Ltd. ("SCL"); Stephen Peek appeared on behalf of Defendant Las Vegas Sands Corp. ("LVSC"); Steve Morris appeared on behalf of Defendant Sheldon G. Adelson ("Adelson"); and Donald Campbell and Colby Williams appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). This Joint Status Report is provided to the Court in anticipation of the Mandatory Rule 16 Conference scheduled for 9:00 a.m. on April, 22, 2011. The parties have agreed as follows:

**Initial Briefing Schedule**

On or before **April 20, 2011**, LVSC will respond to Plaintiffs' First Amended Complaint ("FAC") with the filing of an answer and counterclaim and a motion to dismiss Plaintiff's fifth

1 cause of action; SCL will respond to the FAC with the filing of a motion to dismiss.

2 On or before **May 3, 2011**, Adelson will file a motion to dismiss the FAC. (The  
3 Defendants' respective motions to dismiss are referred to collectively as the "Motions to  
4 Dismiss".)

5 On or before **May 24, 2011**, Jacobs will file his opposition briefs to the Motions to  
6 Dismiss.

7 On or before **June 3, 2011**, Defendants will file their respective reply briefs in support of  
8 the Motions to Dismiss.

9 The parties request the Court schedule the hearing for the Motions to Dismiss for **June 9,**  
10 **2011** or as soon thereafter as the Court will allow.

11 **Discovery Schedule**

12 **Initial Disclosure of Documents:**

13 The parties anticipate that LVSC and SCL's respective initial disclosures will consist of a  
14 high volume of documents which will include Electronically Stored Information ("ESI").  
15 Accordingly, on or before **May 2, 2011**, Jacobs will provide LVSC and SCL with search terms  
16 and date ranges to be used by LVSC and SCL for the collection, review, and production of  
17 documents. Thereafter, and as soon as practicable, LVSC and SCL will begin production of  
18 initial disclosures on a rolling basis which will be completed by **July 1, 2011**.

19 The parties will make a good faith effort to resolve any dispute relating to the ESI terms  
20 and/or dates provided by Jacobs. To the extent the Court's assistance is needed to resolve any  
21 potential ESI dispute, the parties agree to seek the Court's assistance on an expedited basis and  
22 LVSC and SCL will move forward with production of documents related to the *undisputed*  
23 search terms and dates insofar as practicable.

24 On or before **May 16, 2011**, Jacobs will make his initial document disclosures. Jacobs  
25 will continue to produce any remaining documents on a rolling basis which will be completed on  
26 or before **July 1, 2011**.

27 **Initial Disclosure of Witnesses:**

28 On or before **May 16, 2011**, the parties will provide their initial lists of witnesses of each



1 individual likely to have information discoverable under Rule 26(b).

2 Depositions:

3 The parties agree that no depositions will be taken until after **July 18, 2011**.

4 Discovery and Motion Deadlines

5 The final date to file motions to amend pleadings or add parties without a further court  
6 order will be **November 1, 2011**.

7 The parties will make initial expert disclosures on or before **December 1, 2011**.

8 The parties will make their rebuttal expert disclosures on or before **February 1, 2012**.

9 The parties will complete discovery by **March 12, 2012**.

10 The final date to file dispositive motions will be **April 2, 2012**.

11 Trial

12 The parties estimate the trial will last **three to four weeks** and request a trial setting on  
13 the **June 2012** stack, or as soon thereafter as the Court's calendar will allow.

14 DATED this \_\_\_\_\_ day of April, 2011.

DATED this \_\_\_\_\_ day of April, 2011.

15  
16 /s/ J. Stephen Peek  
17 J. Stephen Peek, Esq.  
18 Holland & Hart LLP  
3800 Howard Hughes Parkway, 10th Floor  
Las Vegas, Nevada 89169  
19 *Attorneys for Defendant Las Vegas Sands*  
20 *Corp.*

21 DATED this \_\_\_\_\_ day of April, 2011.

/s/ Patricia Glaser  
Patricia Glaser, Esq.  
Glaser Weil Fink Jacobs Howard Avchen &  
Shapiro LLP  
3763 Howard Hughes Parkway, Suite 300  
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DATED this \_\_\_\_\_ day of April, 2011.

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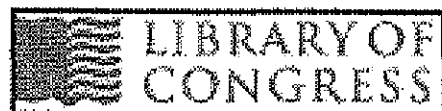
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EXHIBIT "D"

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## Library of Congress Web Archiving



- [Ask a Librarian](#)
- [Digital Collections](#)
- [Library Catalogs](#)

Search

GO

[The Library of Congress](#) > [Web Archiving](#) > [FAQs](#)

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## Web Archiving FAQs

### About the Library of Congress Web Archives

1. [What is the Library of Congress Web Archive?](#)
2. [Why is the Library of Congress archiving websites?](#)
3. [What kinds of websites does the Library archive?](#)
4. [How large is the Library's archive?](#)
5. [Are other organizations doing similar work?](#)
6. [Why is the Library archiving websites if others are doing it as well?](#)
7. [How can I contact the Library of Congress about its web archive?](#)

### How Web Archiving Works

1. [How does the Library archive websites?](#)
2. [What is a web crawler?](#)
3. [How much of a website is collected in the archive?](#)
4. [Do you archive all identifying site documentation, including URL, trademark, copyright statement, ownership, publication date, etc.?](#)
5. [Is there any personal information in the web archive?](#)

### Information Especially for Webmasters and Site Owners

1. [Why was my website selected?](#)
2. [How often and for how long will you collect my site?](#)
3. [What should I do if your crawler causes problems with my site?](#)
4. [My site has a password-protected area that requires a user ID and password. Will this protected content be archived?](#)
5. [I have a robots.txt exclusion on my website to block crawlers from certain parts of my site. How does this affect your collecting activity?](#)
6. [Do we need to contact you if our URL changes?](#)
7. [How do researchers access the archived websites?](#)
8. [What will people see when they access the archived site?](#)
9. [When will my archived site be available to researchers?](#)
10. [Will the archived page compete with my current site?](#)
11. [Will there be a link from your archive to my site as it currently exists?](#)
12. [What if I change my mind about allowing access to offsite researchers?](#)
13. [What are the copyright implications of the archiving of our site?](#)
14. [Will Library of Congress take over hosting of my site?](#)
15. [I would like to archive my website. Can you help me?](#)

### The Library of Congress Permissions Process

1. [I was contacted via e-mail by the Library of Congress about archiving of my site. Is this a real request? Is it safe to click on the link?](#)
2. [What does it mean to grant or deny permission to allow the Library to display off-site?](#)
3. [I am having difficulty filling out your permission form.](#)

4. Why have I received multiple permission requests from the Library of Congress?

## About the Library of Congress Web Archives

### 1. What is the Library of Congress Web Archive?

The Library of Congress Web Archive is a collection of archived websites grouped by theme, event, or subject area. Web archiving is the process of creating an archival copy of a website. An archived site is a snapshot of how the original site looked at a particular point in time. The Library's goal is to document changes in a website over time. This means that most sites are archived more than once. The archive contains as much as possible from the original site, including text, images, audio, videos, and PDFs.

### 2. Why is the Library of Congress archiving websites?

The Library of Congress is working with other libraries and archives from [around the world \(external link\)](#) to collect and preserve the web because an increasing amount of information can only be found in digital form on websites. A lot of cultural and scholarly information is created only in a digital format and not in a physical one. If it is not archived, it may be lost in the future.

Creating a web archive also supports the goals of the Library's Digital Strategic Plan. The Plan focuses on the collection and management of digital content and the [National Digital Information Infrastructure and Preservation Program's \(NDIIPP\)](#) strategic goal to manage and sustain at-risk digital content.

### 3. What kinds of websites does the Library archive?

The Library archives websites that are selected by recommending officers, or curators, based on the theme or event being documented. The types of sites archived include, but are not limited to: United States government (federal, state, district, local), foreign government, candidates for political office, political commentary, political parties, media, religious organizations, support groups, tributes and memorials, advocacy groups, educational and research institutions, creative expressions (cartoons, poetry, etc.), and blogs.

In 2010, the Library launched a program to archive sites not related to a particular theme or event. The sites are selected based on the subject expertise of recommending officers in three divisions: Humanities and Social Sciences; European Division; and Science, Business and Technology.

For a list of all current and previous collections, visit our [collections](#) page. To view publicly available collections, visit the [Library of Congress Web Archives](#).

### 4. How large is the Library's archive?

As of April 2011, the Library has collected about 235 terabytes of data (one terabyte = 1,024 gigabytes). The archives grow at a rate of about 5 terabytes a month.

### 5. Are other organizations doing similar work?

Yes, there are a variety of other organizations that archive websites, including non-profits, the U.S. government, libraries, and archives.

The [Internet Archive \(external link\)](#) is a non-profit organization that has archived billions of web pages since 1996. The Library of Congress contracts with the Internet Archive for many of its web archiving projects.

A number of U.S. federal government agencies collect official web content, including the [National Archives and Records Administration \(external link\)](#) (NARA) and the [Government Printing Office \(external link\)](#) (GPO).

The Library of Congress also works closely with members of the [International Internet Preservation Consortium \(external link\)](#) (IIPC). The IIPC was formed in 2003 to collect of a rich body of Internet content from around the world and to foster the development and use of common tools, techniques and standards. The Library of Congress is a founding member of the IIPC. Other members include the national libraries of Australia, Canada, Denmark, Finland, France, Iceland, Italy, Norway, Sweden and the United Kingdom, the Internet Archive, and many others. Visit the [IIPC Member Archives \(external link\)](#) portal to learn more about their programs.

### 6. Why is the Library archiving websites if others are doing it as well?

Libraries and other organizations that archive the web have different collection strategies and collect different URLs at varying frequencies and depths. The Internet Archive is often thought to be archiving "the entire web" but

in reality it is just a slice of what's available. It is important for libraries and archives to also select and create collections of web content. By working together, libraries, historical associations, archives, state governments, universities, and others focusing on specific collecting areas, can make sure that a larger amount digital content is archived and preserved for the future.

**7. How do I contact the Library of Congress about its web archive?**

Use the [online form](#) to ask a question about web archiving activities or to send a message to the Library's Web Archiving Team.

[Top](#)

## How Web Archiving Works

**1. How does the Library archive websites?**

The Library or its agent makes a copy of a website using an open-source archival-quality web crawler called [Heritrix \(external link\)](#). The Library uses other in-house tools to manage the selection and permissions process.

**2. What is a web crawler?**

A web crawler is a software agent that traverses the web in an automated manner, making copies of the content it finds as it goes along. Web crawlers are used to create the index against which search engines search, or, in the context of archival crawling, to capture web content intended for longer-term preservation.

**3. How much of a website is collected in the archive?**

The Library's goal is to create an archival copy—essentially a snapshot—of how the site appeared at a particular point in time. Depending on the collection, the Library archives as much of the site as possible, including html pages, images, flash, PDFs, audio, and video files, to provide context for future researchers. The Heritrix crawler is currently unable to archive streaming media, "deep web" or database content requiring user input, and content requiring payment or a subscription for access. In addition, there will always be some websites that take advantage of emerging or unusual technologies that the crawler cannot anticipate.

**4. Do you archive all identifying site documentation, including URL, trademark, copyright statement, ownership, publication date, etc.?**

The Library attempts to completely reproduce a site for archival purposes.

**5. Is there any personal information in the web archive?**

The Library collects websites that are publicly accessible. These may include pages with personal information.

[Top](#)

## Information Especially for Webmasters and Site Owners

**1. Why was my website selected?**

Websites are selected by Library subject experts according to collection strategies developed for each thematic or event collection. The Library maintains a [collections policy statement](#) and other internal documents to guide the selection of electronic resources, including websites.

**2. How often and for how long will you collect my site?**

Typically the Library crawls a website once a week or once monthly, depending on how frequently the content changes. Some sites are crawled more infrequently—just once or twice a year.

The Library may crawl your site for a specific period of time or on an ongoing basis. This varies depending on the scope of a particular project. Some archiving activities are related to a time-sensitive event, such as before and immediately after a national election, or immediately following an event. Other archiving activities may be ongoing with no specified end date.

**3. What should I do if your crawler causes problems with my site?**

The Library or its agent always tries to politely crawl sites in order to minimize server impact. Occasionally there may be problems. Please [contact us](#) immediately if you have problems or questions.

4. **My site has a password-protected area that requires a user ID and password. Will this protected content be archived?**

The Library does not archive password-protected content, unless by special permission from the site owner.

5. **I have a robots.txt exclusion on my website to block crawlers from certain parts of my site. How does this affect your collecting activity?**

The Library attempts to collect as much of the site as possible in order to create an accurate snapshot for future researchers. The Library notifies site owners before crawling which means we generally ignore robots.txt exclusions. Please [contact us](#) immediately if you have questions about this policy.

6. **Do we need to contact you if our URL changes?**

We periodically monitor websites for changes that might affect the crawler, however, it is helpful if you [notify us](#) with any changes to the URL.

7. **How do researchers access the archived websites?**

Public web archives are available on the [Library of Congress Web Archives](#) site. Researchers will access the collections through this main page. Each collection has a homepage where researchers can search or browse the catalog records for that collection.

Users may also [browse](#) or [search](#) across all of the available archives. Please note that the archives sites themselves are not full-text indexed, only the records about the archived sites are searchable.

If off-site access is available for an archived website, the catalog record will contain a page that links to all of the dates the site was archived. If off-site access is not available, the record will state "Access restricted to on-site users at the Library of Congress." Off-site access is only available if the site owner granted permission.

8. **What will people see when they access the archived site?**

Your archived site will appear much like it was on the day it was archived. The Library tries to get capture the content as well as the look and feel. It will have a [banner](#) at the top of the page that alerts researchers that they are viewing an archived version. The date that the site was archived also appears in this banner. Researchers will be able to navigate the site much like the live web. Some items don't work in the archive, such as mailto links, forms, fields requiring input (e.g. search boxes), some multimedia, and some social networking sites.

9. **When will my archived site be available to researchers?**

Web archive collections are made available as permissions, Library policies, and resources permit. There is normally a 6 month to a year lag time before the collection is made available to researchers. This is due to production and cataloging work that occurs for each archived site.

10. **Will the archived page compete with my current site?**

This is generally not a problem due to the time it takes for the archive to be available to researchers. The public will need to visit your live website in order to retrieve current information. If you have concerns about public access to the archived version of your website, you may deny the Library permission to provide access to researchers off-site.

11. **Will there be a link from your archive to my site as it currently exists?**

The catalog record will record the original URL—see the ["URL at time of capture"](#) field, but it will not be hyperlinked. Also, the original URL will also be listed on the page that displays all of the archived [dates](#).

12. **What if I change my mind about allowing access to offsite researchers?**

Please [contact](#) the Library if you change your mind about access via the public website, and you are a copyright owner of or otherwise have exclusive control over materials presently in the archive.

In your request, please identify the specific website, collection name (if you know it), (e.g., [www.mysite.com](#); Election 2004 Web Archive). If you have the original email the Library sent you for permission, please reply to that; it has tracking information in it to help the Library identify your URL in its collections.

**13. What are the copyright implications of the archiving of our site?**

The copyright status of your site remains with you. We have a statement on each [collection homepage](#) about copyright.

**14. Will Library of Congress take over hosting of my site?**

No. By archiving your site, the Library of Congress is preserving a snapshot of your site at a particular time. You are still responsible for hosting and maintaining your live website.

**15. I would like to archive my website. Can you help me?**

At this time, the Library of Congress does not have a program to help individuals archive their personal websites. However, the Library's Digital Preservation website has information about [personal archiving](#).

[Top](#)

**The Library of Congress Permission Process****1. I was contacted via e-mail by the Library of Congress about archiving of my site. Is this a real request? Is it safe to click on the link?**

The Library notifies each site that we would like to include in the archive (with the exception of government websites), prior to archiving. In some cases, the e-mail asks permission to archive. All notifications request permission to provide off-site access to researchers.

The Library uses a permissions tool that allows easy contact with site owners via e-mail, and enables the site owners to respond to permissions requests using a web form. The responses are then recorded in a database.

The e-mail you receive from the Library of Congress contains [webcapture@loc.gov](mailto:webcapture@loc.gov) in the "from" address, and "Library of Congress Permission Request" in the subject line. At the bottom of the e-mail message is the line, "LC Reference: [record ID, blanket id]", which is the Library's internal tracking information.

If you would like to confirm that the Library sent the permission e-mail, please [contact](#) us and a member of the Web Archiving Team will assist you.

**2. What does it mean to grant or deny permission to allow the Library to display off-site?**

If you grant the Library permission to display your archived website off-site, it means the Library of Congress will provide public access to the archived copies of your website. If you deny off-site access, the Library may catalog and identify the site as part of a particular collection on our public website, but your archived site will only be available to researchers who visit the Library of Congress buildings in Washington, D.C.

**3. I am having difficulty filling out your permissions form.**

Please [contact](#) us if you have problems with the form, or reply to the e-mailed permission request and someone from the Library's project team will assist you.

**4. Why have I received multiple permission requests from the Library of Congress?**

In previous years, the Library was required to send permission notices to all selected websites in every collection it initiated, even if the site had previously granted or denied permission. Policies changed in 2006 and the Library can now request and apply blanket permission. This means that if a site owner granted permission after 2006, the Library can use that permission for future collections. This has minimized duplication in permission requests, however the Web Archiving Team occasionally contacts site owners for additional permissions if required.

[Top](#)